

**“HEALTH Act of 2005”**  
**Comprehensive Medical Liability Reform**  
**Senators Ensign and Gregg**

**Summary**

Encourages Speedy Resolution of Claims

**Statute of limitations**

- Guarantees that health care lawsuits are filed no later than 3 years after the date of injury.
- Extends the statute of limitations for minors injured before age 6.

Compensates Patient Injury

**Economic damages** – No limit

**Non-economic damages** – Preempts state law to require hard cap of \$250,000

**Punitive damages** –

- The greater of 2 times economic damages or \$250,000
- Must prove clear and convincing evidence of malicious intent to injure or deliberate failure to act.
- Compensatory damages must be awarded first; allows for separate proceeding
- Providers who prescribe an FDA approved product may not be party to a product liability suit involving that product.

**Fair share rule** -- Each party only liable for their own share (i.e, joint liability)

**Periodic payment of future damages** – Past/current expenses paid at time of judgment, while future damages, if \$50,000 or more, can be paid over time.

Maximizes Patient Recovery

**Limits attorney contingency fees** – Limits according to sliding award scale:

- 40% of first \$50,000;
- 33.3% of next \$50,000;
- 25% of next \$500,000;
- 15% of any amount over \$600,000

**Creates an expert witness rule** -- Must be appropriately credentialed and experienced with standard of care in case.

## **“HEALTH Act of 2005”**

### Prevents Duplication and Directs Liability to Responsible Party

**True collateral source reform** – Prohibits double dipping of damages by *requiring* courts to reduce damages by the amount of any other source of benefits (such as health insurance), to which the claimant is entitled. However, there is no automatic reduction if the other payer seeks reimbursement, thereby ensuring that the injured party is still made whole.

**Flexible Reimbursement and Subrogation** – Respects state laws that allow for reimbursement or subrogation to ensure that liability is allocated to the responsible party and that costs are not passed onto healthcare consumers. Also saves state laws, such as California, that prohibit reimbursement and subrogation.

### Scope

**Comprehensive reform** -- Applies to all health care providers, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product in which the claimant alleges a health care liability claim based upon the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products.